quent amendments, do not include electric street railroads in their scope. *Held,* that the act being designed to regulate the vast interstate transportation business of the country, was not to be narrowly interpreted; that it did include street railroads doing an interstate business; that consequently, the Commission had jurisdiction to establish the rates objected to. *Omaha & C. B. St. Ry. Co. et al.* v. *Interstate Commerce Commission* (United States, Intervener) (Commerce Court, 1911), 191 Fed. 40.

Certain State courts have held that inasmuch as street railways and commercial railways are classified separately in statutes by the legislatures, that it must be taken to indicate that they are to be considered under different heads. *Board of R. R. Com.* v. *Market St. Ry. Co.,* 132 Cal. 677, 64 Pac. 1065; *Sams* v. *St. Louis etc. Ry.,* 174 Mo. 53, 73 S. W. 686, 61 L. R. A. 475. *Contra, Savannah T. & Isle of Hope Ry.* v. *Williams,* 117 Ga. 414, 61 L. R. A. 249 and notes; *Gyger* v. *Phila. etc. Ry. Co.,* 136 Pa. 96, 104; *Chicago* v. *Evans,* 24 Ill. 52. The court refused to apply this reasoning to the federal act. It followed the conclusions of the Commission that street railways were included in the Act. *Willson* v. *Rock Creek Ry. Co.,* 7 I. C. C. Rep. 83; JUDSON, INTERSTATE COMMERCE, 146-9. As expressed by Chief Justice WHITE, in *Employers' Liability Cases,* 207 U. S. 463, 497, "The act extends to every individual or corporation who may be engaged in interstate commerce as a common carrier." If then the Interstate Commerce Act includes street railways, the fact that this one was created under the street railway act of Nebraska and not under the commercial railway act, is immaterial. State legislation can neither limit nor preclude the granting of such power by Congress. *Cooley* v. *Port Wardens,* 12 How. 299. No State can regulate interstate railroad passenger rates. *Wabash, St. Louis etc. Ry. Co.* v. *Illinois,* 118 U. S. 557, 30 L. Ed. 244. Consequently if the Commission cannot do so under the Interstate Commerce Act, then such rates are uncontrolled. This same reasoning applies to interstate *street* railways with equal force. Merely because street railways are not mentioned, it cannot be maintained that they are not to be included. As expressed by the court on page 47, and here we have the fundamental reason for the decision, "A statute of the scope of the Interstate Commerce Act, designed to regulate the vast interstate transportation business of the country, is not to be narrowly interpreted—any more than the Constitution—in accordance with the economic or physical conditions prevailing at the time of its adoption." The decision presents the commendable broad type of construction shown in the constitutional construction of such recognized authorities as *Crandall* v. *Nevada,* 6 Wall 35 and *Pensacola Tel. Co.* v. *West. U. Tel. Co.,* 96 U. S. 1.

LANDLORD AND TENANT—LEASE OF SALOON AS AFFECTED BY PROHIBITORY LAW.—Plaintiff leased to defendant a building for a term of years "to be occupied for the purpose of operating and conducting a retail liquor business and saloon." Before expiration of the term the county in which the building was situated adopted local option in pursuance to a statute that was enacted prior to the execution of the lease. *Held,* that the adoption of local option did not cancel the lease for the balance of the term; that the purpose stated in the lease was permissive rather than restrictive and was not a warranty

on the part of the lessor that the premises could be legally so occupied throughout the term, and that defendant is liable for rent for the balance of the term. *Hyatt* v. *Grand Rapids Brewing Co.* (Mich. 1912), 134 N. W. 22, 18 D. L. N. 925.

Defendant contended that the adoption of local option terminated the lease, relying on the case of *Hooper* v. *Mueller* (1909), 158 Mich. 595, 123 N. W. 24. In that case a building was leased for a term to be occupied for hotel and saloon purposes, and the lessors agreed that if they were unable to secure for the lessee two sufficient bondsmen required by law in cases of retail dealers in malt and spirituous liquors, the lease should be null and void. The court held that the adoption of local option during the term made the performance by lessor of his agreement to furnish bondsmen impossible and terminated the lease. It is well settled generally that where the act contracted for is rendered unlawful by the enactment of a statute before the expiration of the time for performance, the obligation is thereby discharged. *Cordes* v. *Miller,* 39 Mich. 581, 33 Am. Rep. 430; *American Mercantile Exchange* v. *Blunt,* 102 Me. 128, 66 Atl. 212, 10 L. R. A. (N. S.) 414. The decision of questions, such as are involved in the principal case, therefore would seem to depend upon whether or not the use of the premises for saloon purposes is the act contracted for. If the lease excludes by its terms the use of the premises for any other purpose, a different question is involved and the case would seem to fall within the general rule stated. But the adjudicated cases, with unusual uniformity, hold that the adoption of local option does not give the lessee a right to abandon the lease, although they do not all give the same reasons for so holding. *Lawrence* v. *White,* 131 Ga. 840, 850, 63 S. E. 631; *Abadie* v. *Berges,* 41 La. Ann. 281, 6 South. 529; *Shreveport Ice & Brewing Co.* v. *Mandel* (1911), 128 La. 314, 54 South. 831; *Kerley* v. *Mayer,* 155 N. Y. 636, 49 N. E. 1099, 10 Misc. 718, 31 N. Y. Supp. 818, wherein it was also held that a provision that the premises "are to be used and occupied only as a * * * first-class liquor saloon" did not restrict the use to saloon business, but merely restricted the character of that business. *San Antonio Brewing Ass'n.* v. *Brents* (1905), 39 Tex. Civ. App. 443, 88 S. W. 368; *Hecht* v. *Acme Coal Co.* (Wyo. 1911), 113 Pac. 788; *O'Byrne* v. *Henley* (1909), 161 Ala. 620, 50 South. 83, 23 L. R. A. (N. S.) 496.

MARRIAGE—INTOXICATION AS GROUND OF ANNULMENT.—Plaintiff husband marriage is invalid, but it is not invalid if the intoxication is of a less degree of that marriage, filing a complaint in which he alleged that, at the time of the ceremony he was so intoxicated from alcoholic drinks that he had no comprehension of what he was doing or of the nature or effect of the ceremony. It appeared in evidence that plaintiff had been addicted, for years, to excessive drinking and had had several attacks of delirium tremens. He had been drinking heavily on the day of the ceremony and had continued in an intoxicated condition for about a week following it. *Held,* that the lower court had set up the correct test when it inquired whether the plaintiff, at the time of the ceremony possessed the mental capacity to understand the nature of the duties and obligations imposed by the marriage contract, and that plaintiff had not such capacity. *Dunphy* v. *Dunphy* (Cal. 1911), 119 Pac. 512.